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10/625,628

07/24/2003

Gerrit Koppert

KOPPERT1A

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09/19/2006

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EXAMINER

ROBINSON, KEITH O NEAL

ART UNIT

PAPER NUMBER

1638

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,628

Applicant(s)

KOPPERT, GERRIT

Examiner

Keith O. Robinson, Ph.D.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 18 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-12 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-12 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. The amendments to claims 1 and 16 and the cancellation of claims 3, 4, 13, 14, 15 and 17, filed July 18, 2006, have been received and entered in full.

2. Claims 1, 2, 5-12 and 16 are under examination.

Response to Arguments

3. Applicant's arguments, see 'Remarks', page 6, filed July 18, 2006, with respect to the 35 USC § 102 (b) rejection of claim 16 on pages 10-11 of the Office Action mailed April 18, 2006, have been fully considered and are persuasive. The rejection has been withdrawn.

Claim Rejections - 35 USC § 112, first paragraph – Written Description

4. Claims 1, 2, 5-12 and 16 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The rejection is repeated for the reasons of record as set forth in the Office Action mailed April 18, 2006, as applied to claims 1, 2, 4-12, 16 and 17 (see pages 2-7). Applicant's arguments, filed July 18, 2006, have been fully considered but they are not persuasive.

Applicant argues the amended claims meet the written description requirement (see page 5, 2nd and 3rd paragraphs of 'Remarks' filed July 18, 2006).

This is not persuasive. As stated in the previous Office Action mailed April 18, 2006, the specification only provides support for written description of *R. sativa* line V33 (see page 4, 1st paragraph). Also, as stated previously, the invention, as broadly claimed, would not be distinguished from any other *R. sativa* plant with the same characteristics, unless the claims are amended to read on *R. sativa* line V33 (see page 4, 3rd paragraph of the previous Office Action mailed April 18, 2006). In addition, the term "combinations thereof" read on hybrid plants and the specification does not provide a written description of any hybrid plants in terms of their genetic, morphological and physiological characteristics.

Claim Rejections - 35 USC § 112, first paragraph - Enablement

5. Claims 1, 2, 5-12 and 16 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection is repeated for the reasons of record as set forth in the Office Action mailed April 18, 2006, as applied to claims 1, 2, 4-12, 16 and 17 (see pages 7-10). Applicant's arguments, filed July 18, 2006, have been fully considered but they are not persuasive.

Applicant argues the amended claims meet the enablement requirement (see page 5, 4th and 5th paragraphs of 'Remarks' filed July 18, 2006).

This is not persuasive. As stated in the previous Office Action mailed April 18, 2006, the rejection is based on the fact that the claimed *R. sativa* plant has not been

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deposited (see page 8, 1st paragraph). In addition, the term "combinations thereof" read on hybrid plants and the specification does not provide any guidance regarding any hybrid plants in terms of their genetic, morphological and physiological characteristics.

Applicant does not address the arguments the Examiner has presented in the previous Office Action mailed July 18, 2006 on pages 9-10 with regard to the age of the references and the evidence provided that shows that the genetic interactions that confer a trait of anthocyanin accumulation are polygenic and unpredictably genetically complex in *Raphanus*.

Conclusion

6. No claims are allowed.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith O. Robinson, Ph.D. whose telephone number is

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571-272-2918. The examiner can normally be reached on Monday - Friday 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Keith O. Robinson, Ph.D.

September 6, 2006

DAVID H. KRUSE, PH.D.
PRIMARY EXAMINER

A handwritten signature in black ink, reading "David H. Kruse". The signature is written in a cursive, flowing style with a large initial "D".